

EMPLOYMENT LAW ALERT

Sick Time and Domestic Violence Leave Laws

Mandatory Sick Time

Massachusetts voters approved Ballot Question 4, guaranteeing sick time to employees. This new law, effective July 1, 2015, mandates that employers allow employees to take time off for health and safety needs for them and, in some cases, their families. Here is a brief overview:

- Employers with 11 or more employees must provide *paid* sick time, while employers with 10 or fewer employees must provide *unpaid* sick leave.
- Employees begin to accrue sick time after 90 days of employment.
- After July 1, 2015, sick time is to be earned at a rate of 1 hour for every 30 hours worked, up to 40 hours per calendar year.
- Employees may carry over up to 40 hours of earned sick time into the next calendar year but may not earn more than 40 hours of sick time in a given calendar year.
- Employees may use earned sick time if employees are ill or have a medical appointment, or if they must care for an ill family member. They also must be permitted to use sick time to receive assistance related to domestic violence.
- Employers may require written certification from a relevant health care provider if the employee uses more than 24 consecutive scheduled hours of sick time.
- If foreseeable, the employee is required to give advance notice of their intention to use earned sick time.
- Employers are not required to pay out earned, unused sick time upon termination of employment.

Employers that already provide employees paid time off under a paid time off policy, vacation or other paid leave policy, are not required to provide any additional paid sick time under the new law, provided that they permit employees to use at least 40 hours per calendar year for the purpose set forth under law, employers are prohibited from interfering with an employee's right to earned sick leave or retaliating against an employee who requests earned sick leave. Employers are also prohibited from retaliating against an employee based on the employee's support of another employee's exercise of such rights

In addition to enforcement by the Attorney General's Office, employees who believe their rights under this law have been violated will have a private right of action to sue their employers. The Attorney General is required to create a notice poster (which employers must display) informing employees of their rights and responsibilities under this law and will also prescribe all employers' obligations to make, keep and preserve records concerning sick time.

Domestic Violence Leave

Employers with 50 or more employees must permit an employee who is a victim of domestic or sexual violence (or who has a family member who is a victim) to take up to 15 days of job-protected leave from work in any 12-month period – as long as the employee is not the perpetrator of the violence. This leave is available to all employees regardless of their weekly hours or duration of employment.

An employer must allow an employee to take the leave if the employee, or a family member of the employee, is a victim of abusive behavior and the employee is using the leave from work to get medical attention, counseling, victim services or legal assistance; secure housing; obtain a court protective order; appear in court or before a grand jury; meet with law enforcement officials; attend child custody proceedings; or address other issues directly related to the abusive behavior.

To take leave, employees must first exhaust all annual or vacation leave, personal leave, and sick leave, unless the employer waives that requirement. Each employer must also decide whether the leave allowed under the Act is paid or unpaid.

Employees are required to notify the employer within three workdays that he leave was or is being taken. The notice may be communicated by the employee, or by another person who is helping out, such as a family member or counselor, social worker, health care worker, member of the clergy, shelter worker, legal advocate or other professional. Employees may be required to provide an employer documentation of the domestic or sexual violence, including medical records or a police report. The law contains confidentiality provisions regarding any information provided to the employer.

The Attorney General's Office is charged with enforcement of the law. An employee who has been retaliated against for seeking leave, or otherwise exercising his or her rights under the law, is entitled to bring a civil action seeking injunctive relief, lost wages and benefits, and other damages against the employer. Any employee who prevails on such a claim is entitled to mandatory triple damages and attorneys' fees. To date, no regulations have been issued, and the Attorney General's Office has not issued any interpretive guidance.

The law requires that employers notify employees of their rights and responsibilities under this law. To satisfy this requirement, employers may need to develop a written policy regarding domestic violence leave or amend their handbooks. In addition, they may need to train managers and human resources professionals regarding this new category of job-protected leave.

Employers should review their current leave policies and update their handbooks and develop procedures to ensure compliance with this new law.

***For more information or assistance with compliance with these laws, please contact a member of DWPM's
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